IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
April 24, 2008 Session

OAKTENN, INC. v. LOREN L. CHUMLEY, COMMISSIONER OF REVENUE, STATE OF TENNESSEE

Appeal from the Chancery Court for Sevier County
No. 06-3-145 Telford E. Forgety, Chancellor

No. E2007-02411-COA-R3-CV - FILED JULY 2, 2008

The issue in this case is whether a corporation, which manages a central laundry facility created for the use of five hotels by agreement of the corporation and the limited partnerships which own the hotels, owes the State of Tennessee sales taxes on the laundry receipts. The Department of Revenue assessed sales tax on funds reimbursed the managing corporation by the five hotels under the theory that such reimbursements were actually taxable charges for laundry services. The corporation, which is also the sole general partner of the limited partnerships, challenged the assessment, and the trial court granted summary judgment in its favor. It is our determination that the payment of monies to the corporation by the five hotels were not subject to sales taxes if such monies constituted reimbursements of advancements made by a member of a joint venture in furtherance of the venture. However, the record shows that a dispute exists as to whether the laundry was a joint venture. Therefore, there remains a genuine issue of material fact. Accordingly, the trial court's grant of summary judgment is vacated, and the case is remanded for trial on the merits.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Vacated; Cause Remanded

SHARON G. LEE, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and D. MICHAEL SWINEY, J., joined.

Robert E. Cooper, Attorney General and Reporter; Michael E. Moore, Solicitor General; and Clark B. Thornton, Assistant Attorney General, Nashville, Tennessee, for the appellant, Loren L. Chumley, Commissioner of the Tennessee Department of Revenue.

Dudley W. Taylor, Knoxville, Tennessee, for the appellee, OakTenn, Inc.

OPINION

I. Background

OakTenn, Inc. ("OakTenn"), a Tennessee corporation, was formed in 1993 to serve as sole general partner of F.I. Sevier, L.P. ("FIS"), a limited partnership formed for the purpose of constructing, developing, and operating hotels in Sevierville and Gatlinburg to be managed by OakTenn. In 1994, OakTenn, FIS, and Oak Tree Lodge ("Oak Tree"), a hotel owned by the shareholders, directors, and officers of OakTenn, entered into an agreement to build a central laundry facility ("the laundry") for use of all hotels owned by the partnership. The writing evidencing the agreement, executed on March 16, 1994, provided that the parties agreed to the following:

> 1. To construct a central laundry facility to free space at the hotel properties.
> 2. To provide a central location for delivery of laundry equipment and products.
> 3. All linens etc. will be delivered by laundry truck owned by both properties.
> 4. All truck and laundry products and expenses including driver will be paid equally by both properties.
> 5. Any future constructed hotels or motels will be allowed to use the laundry facility by purchasing additional equipment and sharing the laundry expenses on an equal basis.

Thereafter, the laundry was constructed, and OakTenn assumed its management consistent with its role as manager of hotels belonging to the partnership.

Later in 1994, a second limited partnership, Bearskin Partners, L.P. ("Bearskin") was formed, also for the purpose of constructing, developing, and operating hotels in Sevierville and Gatlinburg, with OakTenn serving as sole general partner of such partnership and manager of the hotels. Bearskin became a participant in the laundry enterprise, and accordingly, hotels developed and operated by Bearskin also utilized the services of the laundry.

At present, OakTenn manages a total of five hotels consisting of Oak Tree Lodge; one hotel owned and operated by FIS; and three hotels owned and operated by Bearskin. All of these hotels utilize the laundry managed and operated by OakTenn. Each month OakTenn advises each hotel of the expenses, including employee wages, it has incurred that month in operating the laundry, and the five hotels share the expenses equally with each writing OakTenn a reimbursement check. The five hotels are the only entities utilizing the laundry, and OakTenn realizes no profit as a direct result of its operation of the laundry, the reimbursement checks being its only receipts. While OakTenn owns the laundry's delivery truck, the laundry facility is owned by the five hotels, as is the equipment used in the laundry, and such equipment is listed on each hotel's property tax schedule with each hotel reporting its proportionate share of the equipment's depreciation.

At some time after June 2004, the Tennessee Department of Revenue ("the Department") conducted an audit of OakTenn for the period beginning January 1, 2001, and ending June 30, 2004, and thereafter issued a notice of assessment advising OakTenn of a sales and use tax deficiency in the amount of $48,643.48 and a business tax deficiency of $3,164.00, all of the former amount and a portion of the latter being based on the Department's determination that OakTenn was engaged in the taxable sale of laundry services during the audit period based on its operation of the hotel laundry. OakTenn challenged this assessment by filing a complaint in the Chancery Court for Sevier County, and thereafter, both OakTenn and the Department moved for summary judgment. The trial court granted OakTenn's motion, ruling that OakTenn's receipt of funds from the five hotels as reimbursement of expenses incurred in its operation of the laundry did not result in OakTenn's being engaged in the taxable sale of laundry services. Accordingly, the trial court abated those portions of the sales and use tax and the business tax attributed to the laundry services in the respective amounts of $47,722.60 and $1,234.00. The Department appeals.

II. Issue

The issue we address is whether the trial court properly granted OakTenn summary judgment.

III. Analysis

A. Standard of Review

Summary judgments enable courts to conclude cases that can and should be resolved on dispositive legal issues. *See* ***Byrd v. Hall***, 847 S.W.2d 208, 210 (Tenn. 1993); ***Airport Props. Ltd. v. Gulf Coast Dev., Inc.,*** 900 S.W.2d 695, 697 (Tenn. Ct. App. 1995). They are appropriate only when the facts material to the dispositive legal issues are undisputed. Accordingly, they should not be used to resolve factual disputes or to determine the factual inferences that should be drawn from the evidence when those inferences are in dispute. *See* ***Bellamy v. Federal Express Corp.,*** 749 S.W.2d 31, 33 (Tenn. 1988).

To be entitled to a summary judgment, the moving party must demonstrate that no genuine issues of material fact exist and that he or she is entitled to judgment as a matter of law. *See* Tenn. R. Civ. P. 56.04; ***Byrd,*** 847 S.W.2d at 210; ***Planet Rock, Inc. v. Regis Ins. Co.,*** 6 S.W.3d 484, 490 (Tenn. Ct. App. 1999). A summary judgment should not be granted, however, when a genuine dispute exists with regard to any material fact. ***Seavers v. Methodist Med. Ctr.,*** 9 S.W.3d 86, 97 (Tenn. 1999); ***Hogins v. Ross,*** 988 S.W.2d 685, 689 (Tenn. Ct. App. 1998). Our task on appeal is to review the record to determine whether the requirements for granting summary judgment have been met. *See* ***Hunter v. Brown,*** 955 S.W.2d 49, 50-51 (Tenn. 1997); ***Aghili v. Saadatnejadi,*** 958 S.W.2d 784, 787 (Tenn. Ct. App. 1997). Tenn. R. Civ. P. 56.04 provides that summary judgment is appropriate where: (1) there is no genuine issue with regard to the material facts relevant to the claim or defense contained in the motion, *see* ***Byrd***, 847 S.W.2d at 210; and (2) the moving party is entitled to a judgment as a matter of law on the undisputed facts. *See* ***Anderson v. Standard Register Co.***, 857 S.W.2d 555, 559 (Tenn. 1993). A party seeking a summary judgment must

demonstrate the absence of any genuine and material factual issues. ***Byrd***, 847 S.W.2d at 214.

When the party seeking summary judgment makes a properly supported motion, the burden shifts to the non-moving party to set forth specific facts establishing the existence of disputed, material facts which must be resolved by the trier of fact. *See* ***Byrd*** 847 S.W.2d at 215; ***Robinson v. Omer***, 952 S.W.2d 423, 426 (Tenn. 1997). The non-moving party may not simply rest upon the pleadings, but must offer proof by affidavits or other discovery materials (depositions, answers to interrogatories, and admissions on file) provided by Rule 56.06 showing that there is a genuine issue for trial. If the non-moving party does not so respond, then summary judgment, if appropriate, shall be entered against the non-moving party. Tenn. R. Civ. P. 56.06.

Summary judgments do not enjoy a presumption of correctness on appeal. *See* ***Nelson v. Martin,*** 958 S.W.2d 643, 646 (Tenn. 1997); ***City of Tullahoma v. Bedford County,*** 938 S.W.2d 408, 412 (Tenn. 1997). Accordingly, when we review a summary judgment, we view all the evidence in the light most favorable to the non-movant, and we resolve all factual inferences in the non-movant's favor. *See* ***Luther v. Compton,*** 5 S.W.3d 635, 639 (Tenn. 1999); ***Muhlheim v. Knox County Bd. of Educ.,*** 2 S.W.3d 927, 929 (Tenn. 1999). A summary judgment will be upheld only when the undisputed facts reasonably support one conclusion – that the moving party is entitled to a judgment as a matter of law. *See* ***White v. Lawrence,*** 975 S.W.2d 525, 529 (Tenn. 1998); ***McCall v. Wilder,*** 913 S.W.2d 150, 153 (Tenn. 1995).

B. Sales Tax on Laundry Services

While management services such as those provided by OakTenn are not taxable, Tennessee statutory law specifically imposes a sales tax on "[t]he laundering or dry cleaning of any kind of tangible personal property, excluding coin-operated laundry, dry cleaning or car wash facilities, where a *charge* is made for the laundering or dry cleaning." Tenn. Code Ann. § 67-6-102(34)(v) (emphasis added). Thus, the question that was before the trial court was whether OakTenn "charged" for the laundering services it provided the hotels. Reasoning as follows, the trial court concluded that the reimbursements received by OakTenn did not constitute "charges" such as would subject OakTenn to taxation under the statue:

> So it appears to me that there was no sale of laundry services, it really was just an arrangement where these hotels joined together to operate the laundry service for themselves and ran the money through one entity, which happened to be OakTenn. There was no - - OakTenn didn't charge any premium. If OakTenn had charged a premium, if OakTenn had owned the equipment, then it would look more like a sale of laundry services, to me. But OakTenn didn't charge a premium, didn't own the equipment. Indeed, apparently just as the

> agreement back in 1994 anticipated, it was the individual hotels/motels that bought the equipment for the laundry, apparently with the exception of this one laundry truck.
>
> . . .
>
> [The hotels] just ran the bills through OakTenn, and that's all it amounted to, so that it really wasn't OakTenn providing anything other than just fronting the money - - loaning the money, you might say - - loaning the money to the four[1] entities to pay the bills in the first instance and then the four entities paying OakTenn back.

In beginning our analysis, we note the following rules established under the common law of this state regarding the construction of tax statutes:

> [C]ourts must construe tax statues liberally in favor of the taxpayer and conversely, strictly against the taxing authority. Where any doubt exists as to the meaning of a taxing statute, courts must resolve this doubt in favor of the taxpayer. Courts may not extend by implication the right to collect a tax beyond the clear import of the statute by which it is levied. By the same token, courts must give effect to the plain import of the language of the act and must not use the strict construction rule to thwart the legislative intent to tax. . . . [C]ourts must give full scope to the legislative intent and apply a rule of construction that will not defeat the plain purposes of the act.

American Airlines, Inc. v. Johnson, 56 S.W.3d 502, 504 (Tenn. Ct. App. 2000) (citations omitted); *see also* ***Saturn Corp. v. Johnson***, 197 S.W.3d 273, 276 (Tenn. Ct. App. 2006).

The Department asserts that OakTenn's status as a corporation separates it from the hotels, contends that what OakTenn calls reimbursements are actually charges, and notes that OakTenn books these reimbursements as income for tax purposes and deducts the expenses reimbursed. The Department contends that the fact that OakTenn did not make a profit or, in the language of the trial court, charge a "premium" for the laundry services is immaterial. In support of its argument, the Department cites ***Trailer Conditioners, Inc. v. Huddleston***, 897 S.W.2d 728 (Tenn. Ct. App. 1995).

---

[1]The trial court apparently disregarded the fifth hotel, Oak Lodge Resort, which as noted earlier, was not owned by either FIS or Bearskin, but was also managed by OakTenn and used the laundry.

Under the facts of ***Trailer Conditioners***, Trailer Conditioners, Inc. ("TCI") was a wholly owned subsidiary of United Parcel Service of America ("UPS"), and its sole activity was to repair trailers belonging to two other subsidiaries of UPS. TCI was formed as a corporate structure separate from UPS because the Teamsters Union would not accept a contract agreeing to wages for trailer repairmen that were lower than those paid to automechanics unless it was dealing with a separate corporate entity. TCI did not bill UPS for the repair services; however, UPS periodically deposited funds in TCI's bank account to reimburse TCI for TCI's payment of the expenses of its operation. The Department assessed TCI for sales taxes on the repair services, and TCI contested the assessment. The trial court ruled in favor of TCI, and the Department appealed. TCI argued that assessment was inappropriate for two reasons. First, TCI noted that under the sales and use tax statute, a "business" is defined as "any activity engaged in by any person, or caused to be engaged in by such person, with the object of gain, benefit or advantage, either direct or indirect . . ." ***Id.*** at 730, citing Tenn. Code Ann. § 67-6-102 (1). TCI argued that it did not furnish services to anyone other than its parent corporation and therefore, did not meet the statutory definition of "business." Second, TCI argued that it did not meet the tax statute's requirement that taxable services be performed "for a consideration." We found no merit in either argument and reversed the judgment of the trial court. As to whether TCI was operating as a business, the trial court found that TCI was not a business because it received no profit and merely operated as "an internal repair service and paymaster for UPS" and therefore, was not engaged in an activity "with the object of gain, benefit or advantage." We disagreed, holding that the production of "gain, benefit or advantage" is not limited to realization of a profit and noted various activities engaged in by TCI that constituted gain benefit or advantage, such as the leasing of property at one of its facilities and the employment of labor at favorable rates. We also disagreed with the trial court's finding that TCI's repair services were not performed for consideration. We defined "consideration" to be "either a benefit to the promisor or a detriment to the promisee." Noting this definition's requirement that there be two separate entities, we found that "despite the extremely close working relationship between the operations of the two companies, they are two distinct entities, and the obligations assumed by one are not binding on the other, except when they arise out of contracts between them." ***Id.*** at 731-32. We further noted that "[t]here would be sufficient benefit to TCI and sufficient detriment to UPS in the parent's regular transfer of substantial funds into TCI's bank accounts to constitute consideration." ***Id.*** at 731. We further indicated the significance of the facts that TCI had bank accounts in its own name, had its own tax identification number, paid unemployment taxes on behalf of its employees, owned several vehicles, was obligated on its accounts with utility services, and was the named employer and signatory to the labor contract with the Teamsters Union.

The Department argues that the circumstances in the instant matter are analogous to those in ***Trailer Conditioners*** and that that case should govern in determining whether the monies paid to OakTenn by the hotels were taxable charges. For example, the Department notes that OakTenn's argument that the monies remitted to it by the hotels are not payments for laundry services but are reimbursements is comparable to TCI's rejected argument that it did not receive consideration and was merely being supplied with funds from UPS to cover its bills and made no profit on the transactions. Equating "charges" with "consideration," the Department asserts that ***Trailer Conditioners*** "stands for the proposition that charges that are break-even, at cost, or without a mark-

up or premium are still consideration for services rendered." The Department contends that just as TCI was found to be a separate entity from UPS, OakTenn, having undertaken to conduct business in corporate form, is a separate entity from the partnerships that it controls and as such, is subject to taxation as was TCI. We respectfully disagree.

While it is true that OakTenn is a corporation, OakTenn argues that, along with the two partnerships, it is also a member of the joint venture to operate the laundry. The Tennessee Supreme Court has set forth the following as elements necessary to create a joint venture:

> The elements that need to be shown to establish a joint venture among several parties are a common purpose, some manner of agreement among them, and an equal right on the part of each to control both the venture as a whole and any relevant instrumentality.

Cecil v. Hardin, 575 S.W.2d 268, 271 (Tenn. 1978). In concluding that TCI and UPS were separate entities in ***Trailer Conditioners,*** we noted that, "despite the close working relationship between the two, they are two distinct entities, and *the obligations assumed by one are not binding on the other*, except when they arise out of contracts between them." 897 S.W.2d at 731-32. By contrast, each member of a joint venture has the power to bind the other members and subject them to liability to third persons as to matters within the scope of the venture. ***Robertson v. Lyons***, 553 S.W.2d 754, 757 (Tenn. Ct. App. 1977). Although a corporation, OakTenn argues that when it incurred expenses via operation of the laundry, it did so in its capacity as a member of the joint venture. As a matter of general law, "a party to a joint venture, may on a proper showing, obtain reimbursement from the other parties of advances and expenses incurred in the ordinary course of the enterprise." 48A C.J.S. *Joint Ventures* §32, p. 355. Furthermore, while a joint venture is not in fact a partnership, the same rules of law govern a joint venture that govern a partnership. ***Federated Stores Realty, Inc. v. Huddleston,*** 852 S.W.2d 206, 212 (Tenn. 1992); ***Messer Griesheim Indus., Inc. v. Cryotech of Kingsport, Inc.***, 45 S.W.3d 588, 605-06 (Tenn. Ct. App. 2001). Under federal tax laws "a partnership isn't treated as a separate entity in the case of contributions of money or property by a partner to a partnership, or distribution of money or property by a partnership to a partner." *See* 33 Am. Jur.2d *Federal Taxation* § 2276 (2008) (citing Treas. Reg. §§ 1.707-1(a), 1.172-1(a). ***Trailer Conditioners*** is readily distinguishable from the present matter in that the parties involved in that case were a corporation and its subsidiary and as such were separate entities and were not acting as members of a joint venture in furtherance of its goal.

While OakTenn insists that the laundry is a joint venture, in its response to OakTenn's statement of material facts, the Department refuses to admit that the laundry is a joint venture. In light of our above analysis, we believe this dispute as to the nature of the laundry constitutes a genuine issue of material fact which must be determined by a trial on the merits. Under these circumstances we are compelled to conclude that trial court erred in granting OakTenn summary judgment.

IV. Conclusion

For the foregoing reasons, the judgment of the trial court is vacated, and the cause is remanded for trial on the merits. Costs of appeal are assessed to the appellee, OakTenn, Inc.

_____

SHARON G. LEE, JUDGE